



The Visiting Committee on Management in the Courts

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NEWS RELEASE

Courts Mired in Managerial Confusion, Says Blue-Ribbon Court Reform Panel

*Visiting Committee on Management in the Courts recommends sweeping changes to system;
Judiciary and Legislature must clarify “who’s in charge,” report says*

BOSTON, Mass. – (March 4, 2003) Describing a court system that is “mired in confusion,” a blue-ribbon panel of business and academic leaders today recommended that Supreme Judicial Court Chief Justice Margaret Marshall, with the cooperation of the Legislature and the Romney Administration, implement a sweeping program to repair the system’s dysfunctional management structure – including installation of clearer administrative authority, tougher performance standards for lagging courthouses and employees, and a more disciplined budget process.

“The impact of high-quality judicial decisions is undermined by high cost, slow action, and poor service to the community,” said the report by the Visiting Committee on Management in the Courts (VCMC). The report was submitted to Chief Justice Margaret Marshall today.

The VCMC was appointed by Chief Justice Marshall last August to provide an independent perspective on management in the state’s courts and recommendations for improvement. Despite some pockets of genuine excellence, the committee found that poor management of the Judiciary is slowing the justice system.

The administration and management of the Judiciary is uneven at best, and oftentimes dysfunctional, according to the VCMC report. “Morale is near the breaking point, and there is little concern for customer service. Employees cry out for leadership. The public wants reasonably priced, quick, and courteous justice, but often receives the opposite,” the report states.

Managerial, administrative and financial inequalities in the judicial system mean that some citizens receive better justice than others, the committee found, warning that businesses avoid states with slow, unsteady courts; residents suffer because of slow case resolution; and, taxpayer money is wasted because of inefficiency.

The VCMC found that chronic organizational and managerial issues have led to higher costs in the system. From 1994 to 2002, caseloads across the system remained flat while costs have increased by 79 percent and personnel have increased by 25 percent – even after layoffs of more than 700 employees last year. The additional resources led to almost no progress in delivering justice faster or more consistently.

J. Donald Monan, S.J, *Chair*; Patricia McGovern, *Vice-Chair*; William C. Van Faasen, *Vice-Chair*
Charles D. Baker, Wesley W. Marple, Jr., Ralph C. Martin, II, Honorable A. David Mazzone, Dorothy Terrell



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“Stop-gap, piecemeal measures will not eradicate these deficiencies,” said the Chairman of the Visiting Committee, Chancellor J. Donald Monan of Boston College. “The fundamental problem, simply put, is that no one really knows who is in charge -- at the local, regional or statewide level. The Judiciary, Legislative and the Executive branches must put in place an administrative structure for the Courts that, for the first time, assures accountability. Without that, it is virtually impossible for legislative leaders to hold chief justices accountable or for chief justices to hold their courts accountable.”

The committee’s report explores some of the underlying problems in the court system, and makes 14 recommendations on what should be considered to turn it around. In its 52-page report delivered to Chief Justice Marshall and the full SJC, the VCMC pointed to three critical issues within the existing court system that need to be addressed:

- A convoluted organizational structure;
- Lack of accountability and performance measurement and management;
- And, an inability to manage costs and resources.

Initiatives

The VCMC developed three initiatives designed to address the causes of the court system’s inefficiencies and its lackluster internal culture. Those initiatives include: 1) committing to new structures of leadership; 2) creating a culture of high performance and accountability; and 3) establishing discipline in resource allocation and use. In its report, the Committee made specific recommendations for carrying out these initiatives.

Management and Leadership

The VCMC found that structures within the Judiciary have created a system that is difficult to manage. For example, while the SJC is the highest court in the Commonwealth, authority within the Judiciary is often directly assigned by the Governor or Legislature rather than delegated by the SJC. The SJC can override the powers of the Chief Justice of Administration and Management only in egregious circumstances.

“The... separation of judicial and administrative leadership into separate centers of power is ... detrimental to both,” the report said. “This... problematic structure is unique among American judiciaries and runs counter to basic management principles.”

Because of a convoluted management structure, court personnel and managers do not know where to turn for guidance. Reporting lines are vague at best. Each layer of management has little ability to direct the next and little accountability to the level above. Employees at every level have difficulty determining their leader’s agenda and how it is to be pursued. Externally, the Judiciary lacks a strong voice to communicate its interests to the public.

To address the issue of management and leadership, the committee suggested the Judiciary increase management experience in its administration. In addition, it suggested that the Judiciary install clear lines of reporting and accountability. The Committee also urged the SJC to exercise more authority on the entire system commensurate with its responsibility to lead the Judiciary.



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High Performance and Accountability

In its review of the court system, the VCMC found that one of the key causes for the difficulty in managing the system is due to a lack of measurement of performance. As the system stands, there are few benchmarks or measurements to measure department or individual performance.

“Not one Court was able to point to clearly defined benchmarks by which it measures itself on... decision-making quality, efficiency, timeliness and service,” the report says. “There are almost no definitions of what a good job or a bad job looks like....”

In addition, it is difficult to reward good performers and discipline the poor ones, the report says, adding that there is no mission statement for the courts, laying out general goals and ideals.

The VCMC developed recommendations to ensure that managers and employees are held accountable for their performance. Ways to improve speed and courtesy, as well as management and employee accountability within the system include:

- Establishing goals with benchmarks and measurements, including a standard cost per case handled, customer service studies, and complaint tracking
- Creating detailed job descriptions
- Measuring managers, employees and units by efficiency, courtesy, and timing
- Establishing regular employee and management reviews
- Making evaluations meaningful by creating consequences for poor performance
- And, publishing court rankings.

Discipline in Resource Allocation and Use

Finally, the VCMC determined that the current system of allocating and distributing resources to the court system is complex and convoluted.

“Control over personnel and resources is a fundamental tool of management,” the report states. “Today, the Massachusetts court system lacks this tool.”

The court system does not have the management capability needed to handle autonomous control over resources. While budget requests are reviewed by the SJC and the Governor’s office, many budget items become the subject of individual lobbying – and sometimes even back room deals. The process leads to gross inequities within the system and varying levels of service within the system, the report says. In addition, funding for divisions is typically based on past spending, not need.

The committee reviewed the existing system of funding the Judiciary and determined a variety changes need to be made to better spend limited resources and track expenditures. The committee’s recommendations include:

- Basing budget and staffing requests and allocations on demonstrated needs, not history
- Re-designing the budget request process so that resources are directed to courthouses in need.
- Improving financial and staff management capabilities
- Eliminating overlap among administrative structures and geographic locations
- Accelerating infrastructure improvements



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- And, recapturing revenues from Judiciary activities and Commonwealth property for the people of the Commonwealth

Implementation

The VCMC recommended a series of steps needed to implement a successful transformation, including:

- Establishing a committee made up of prominent leaders to oversee the development of managerial goals, measurements, benchmarks, and guidelines to oversee court system transformation
- Appointing to the several key judicial positions that will open in the next two years managerially experienced individuals who are committed to the proposed transformation
- Temporarily adding experienced turnaround specialists to complement SJC capabilities in implementing the transformation, using legislative or foundation resources

"The committee realizes that the key to our recommendations will lie in their implementation," said Monan. "Though addressed to the Chief Justice, our recommendations can only be implemented through the cooperative action of the Judicial, Legislative and Executive branches. But it is hard to imagine a more important benefit any government can provide its citizens than a court system that can be trusted to assure justice to its citizens promptly, efficiently and equitably."

The Visiting Committee

Chief Justice Marshall appointed the VCMC in August 2002. The members of the committee, along with Monan, include: Patricia McGovern, vice-chair, William C. Van Faasen, vice chair, Charles D. Baker, Wesley W. Marple, Jr., Ralph C. Martin II, the Honorable David Mazzone, and Dorothy A. Terrell. The global management consulting firm McKinsey & Company provided pro-bono staff assistance to the Committee.

The committee spent six months visiting 14 courthouses, interviewing 165 people, including judges, clerks, probation officers, court officers, clerical staff, administrators, members of the bar, community leaders and many more.

The committee expects that recent proposals by Governor Romney will complement recommendations in its report.



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The Massachusetts Court System

The Basics

- The Massachusetts Court System is made up of the Supreme Judicial Court, the Appeals Court, and the Trial Court.
- The Supreme Judicial Court is the court of final appeals in Massachusetts and is responsible for the general superintendence of the lower courts.
- The Supreme Judicial Court is the only court in Massachusetts with constitutional status. All other courts have been established through legislation.
- The Massachusetts Trial Court was created in 1978. It handles more than 99 percent of the cases entered in the Court System and accounts for more than 90 percent of the system's budget.
- The Trial Court is made up of seven departments employing approximately 7,000 people across the Commonwealth.
- The Trial Court's seven departments are as follows:
 - Boston Municipal Court
 - District Court
 - Housing Court
 - Juvenile Court
 - Land Court
 - Probate and Family Court
 - Superior Court
- There are 378 authorized judicial positions in the Trial Courts.
- The Chief Justice for Administration and Management is the administrative head of the Trial Court. Each of the seven departments of the Trial Court is headed by a department Chief Justice who is responsible for the overall management of his or her department.

The Facts

- The Trial Court budget increased 79 percent from 1994 to 2002, at a compounded annual rate of 7.6 percent. During this same period, the number of cases entered only increased .5 percent, for a compounded annual rate of .06 percent.



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- In a 1996 Bureau of Justice Statistics survey of 45 of the most populous counties in the nation, four of the 12 slowest counties in terms of time to disposition of civil trial cases were from Massachusetts.
- In a 2001 U.S. Chamber of Commerce survey of corporate attorneys, Massachusetts ranked 45th in terms of timeliness.
- In a 2001 Massachusetts Bar Association survey of Massachusetts lawyers on 19 areas of performance, judges received the lowest approval ratings for consideration accorded to parties' time obligations and sensitivity to litigants' legal fees.
- The Massachusetts Court System is the only state-funded court system in the nation with as many as 156 line items in its budget. Line items varied in size and type from \$48,510 "for the operation of the Berkshire, Franklin, Hampden, and Hampshire family court clinic" to \$96,545,267 "for the central administration of the Trial Court."

The Visiting Committee's Fast Facts

- Over six months, the Committee and its staff visited 14 courthouses and interviewed 165 people, including judges, clerks, probation officers, security officers, clerical staff, administrators, members of the bar, community leaders, as well as experts from around the nation.
- In sum, the Visiting Committee and its staff invested over 3000 man-hours during its study of the Massachusetts Courts.
- The Visiting Committee paid special attention to the Boston Municipal, District, and Superior Court departments as well as the Housing and Land Courts, which together handle more than 80 percent of the Trial Court's caseload.



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Quotes Of Note

p. 2 -- Today, the Courts of Massachusetts are mired in managerial confusion. The impact of high-quality judicial decisions is undermined by high cost, slow action and poor service to the community.

p. 2 -- Despite pockets of genuine excellence, the management of the Judiciary is preventing the people of Massachusetts from receiving the justice they deserve. The failings have a significant impact on the citizens of Massachusetts. Some citizens get better justice than others. Businesses avoid states with slow, unsteady courts, families suffer because of slow case resolution, and inefficiency wastes taxpayer money.

p. 10 -- These shortcomings affect a broad range of constituents, as well as court personnel. Taxpayers bear the burden of an unreasonably expensive system, witnesses and police officers are away from other responsibilities as they wait to testify, and litigants wait years for justice. Jurors called for jury duty but not utilized cost the Commonwealth's employers tens of millions of dollars.

p. 11 -- The existing organization of the Courts is unmanageable, inefficient and lacks accountability. These problems are not the result of bad intentions, but the fault of a series of partial solutions that have combined to make the structure of the courts incomprehensible to all but the most attentive observers.

p. 13 -- The Courts must be transformed so that they deliver the justice that the people of the Commonwealth deserve. The Court's current mindset of resignation must be replaced by a relentless focus on serving the public.

p. 13 -- Full implementation of this report would result in a less expensive and more effective court system. Reaching this goal requires something that may be even more challenging than securing funding in a budget crisis – collaboration and cooperation among the Courts and the Legislative and Executive branches.

p. 13 -- Success brings a great reward: a Court system that performs to high standards of civility, timeliness, cost-efficiency and decision-making, and a Commonwealth where citizens can rest assured they will receive the same quality justice from the Islands to the Berkshires.



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p. 16 -- This unusual and problematic structure is unique among American Judiciaries and runs counter to basic management principles followed by private sector organizations.

p. 16 -- The Judiciary suffers from its lack of a clearly defined leader for the entire system. Internally, no one knows where to turn for guidance. Externally, the Judiciary lacks a powerful voice....

p. 24 -- While many courts pointed to high-quality decision-making as a goal, none had a way or measuring progress toward this goal. In fact, not one Court was able to point to clearly defined benchmarks by which it measures itself on...decision-making quality, efficiency, timeliness and service.

p. 24 -- There exists today no complete mission statement for the Courts.

p. 36 -- The current budget system, in addition to being inefficient and non-quantitative, also limits managerial flexibility. The Judiciary has little flexibility to move resources where they are needed in response to changing caseloads or trends.

p. 46 -- The Judiciary must focus attention on its difficulties, its needs and its level of performance, and must generate momentum by laying out a compelling path forward on a rapid timeline.

p. 51 -- The people of this Commonwealth should know that whether they walk into a courthouse in the mountains or on the islands, they will get equal justice, delivered in a timely, efficient, and respectful manner.

p. 52 -- We are confident that our ambitious vision for the future is possible. The current state of low morale, poor performance and budget cuts is also a window of opportunity for change. With awareness of the problem comes acceptance of the need and responsibility for change, and the search for new direction.

p. 52 -- The path ahead will not be easy, and will require a new form of leadership and accountability from the Judiciary, commitment from the Governor, structural change from the Legislature, and years of hard work. But the people of Massachusetts deserve no less.



The Visiting Committee on Management in the Courts

Visiting Committee on Management of the Courts

CHAIR

J. Donald Monan, S.J.

J. Donald Monan, S.J. is the Chancellor of Boston College. From 1972 to 1996, he was the President of Boston College and was instrumental in transforming it into one of the nation's leading universities. He entered the Society of Jesus in 1942 and was ordained to the priesthood in 1955. He holds a Ph.D. from the University of Louvain in Belgium, and has conducted postdoctoral research at Oxford, Paris, and Munich. Before coming to Boston, he served as a Philosophy professor, then as Vice President and Academic Dean at Le Moyne College in Syracuse. He currently serves as a Director of the United States Naval Academy Foundation, Trustee of the Jean R. Yawkey Foundation, and Trustee of Le Moyne College. Among his many past affiliations, he was a Director of the Bank of Boston for twenty years, a Trustee of the WGBH Educational Foundation for twenty-four years, and Chairman of the National Association of Independent Colleges and Universities. A Jesuit scholar, author, and longtime administrator, he has received many honors from distinguished organizations here and abroad.

VICE-CHAIRS

Patricia McGovern

Patricia McGovern is Special Counsel and Senior Vice President for Corporate Affairs of Beth Israel Deaconess Medical Center, a Harvard Teaching Hospital and founding member of CareGroup Healthcare System. Before joining Beth Israel Deaconess Medical Center, Ms. McGovern practiced law at Goulston & Storrs, concentrating in the fields of public law and health care law. Prior to joining Goulston & Storrs, Ms. McGovern served in the Massachusetts State Senate for twelve years. From 1984 to 1992, she chaired the Senate Committee on Ways and Means. In 1998, Ms. McGovern was a Democratic candidate for Governor of Massachusetts. Before her election to the State Senate, she served as Executive Director of the Committee on Criminal Justice in the Executive Office of Public Safety. She is a founder of the Women's Bar Association. Ms. McGovern holds a bachelor's degree and law degree from Suffolk University and was a fellow at the Radcliffe College Public Policy Institute during the 1994-1995 academic year, and a fellow at the Institute of Politics at the Kennedy School at Harvard University in 1992.

William C. Van Faasen

William C. Van Faasen is Chairman, President and Chief Executive Officer of Blue Cross and Blue Shield of Massachusetts. Before joining BC/BS of Massachusetts in June 1990 as Executive Vice President and Chief Operating Officer, Mr. Van Faasen was Senior Vice President of Operational Services at BC/BS of Michigan, where he served in various operational, marketing, and health care capacities over a 20-year period. He currently serves on the Boards of IMS Health, Tier Technologies, Liberty Mutual Group, NSTAR, Citizens Bank of Massachusetts, and the Blue Cross Blue Shield of Massachusetts Foundation. He is President of Boston Minuteman Council, Boy Scouts of America and serves on the Executive Committee of the Greater Boston Chamber of Commerce. Mr. Van Faasen is a past chairperson of both the United Way of Massachusetts Bay and the Greater Boston Chamber of Commerce. Mr. Van Faasen has been honored by the Anti-Defamation League and the Boy Scouts of America, and received the New England Council's New Englander of the Year Award. Mr. Van Faasen holds a bachelor's degree from Hope College and a master's degree in business administration from Michigan State University.



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MEMBERS

Charles D. Baker

Charles D. Baker is President and Chief Executive Officer of Harvard Pilgrim Health Care, Inc. Mr. Baker joined Harvard Pilgrim as CEO in 1999. Before joining Harvard Pilgrim, Mr. Baker was President and CEO of Harvard Vanguard Medical Associates. Prior to joining Harvard Vanguard, Mr. Baker spent eight years in Massachusetts state government, where he served as Secretary of Administration and Finance and Secretary of Health and Human Services for Governors William Weld and Paul Cellucci. Mr. Baker currently serves on the Massachusetts Board of Education, and on the boards of The Kenneth B. Schwartz Center, the Pioneer Institute, the Big Brother Association, the Massachusetts Taxpayers Foundation and the American Association of Health Plans. He chairs the Massachusetts Association of Health Plans. Mr. Baker received a master's degree in management, concentrating in public administration and finance from Northwestern University's Kellogg School and a bachelor's degree from Harvard College.

Wesley W. Marple, Jr.

Wesley W. Marple, Jr. is Professor of Finance and Insurance, Northeastern University, College of Business Administration. Professor Marple was a Ford Foundation Fellow and a member of the faculty at the Harvard Graduate School of Business before joining the Northeastern University College of Business Administration in 1966. He returned to Harvard Business School as a visiting professor during the 1980-81 academic year. A member of a number of professional organizations, including the Financial Management Association, he holds an bachelor's degree from Princeton University and master's and doctorate degrees in business administration from Harvard University. Professor Marple recently served a chair of the Provost Search Committee at Northeastern University, and has served as chair of a number of College of Business Administration committees. He is a director of a small Internet services provider company.

Ralph C. Martin, II

Ralph C. Martin, II is a Partner at Bingham McCutchen LLP, and Consultant in Bingham Consulting Group. Mr. Martin is the former Suffolk County District Attorney, having served as the county's chief law enforcement officer from 1992-2002. Under his tenure, the district attorney's office formed numerous strategic partnerships with local, state and federal law enforcement agencies. Mr. Martin has been recognized as a national leader in this area by former President Clinton and former Attorney General Janet Reno. Mr. Martin has more than 20 years experience as a trial lawyer, Assistant District Attorney, and Assistant United States Attorney. He currently serves on the Board of Directors of the Greater Boston Chamber of Commerce, Blue Cross and Blue Shield of Massachusetts, and The Boston Foundation, and is a Trustee of Brandeis University, and a Trustee and Member of the Executive Committee of Boston Children's Hospital. Mr. Martin has been widely honored, recently receiving the Massachusetts Bar Association's Pro Bono Award for "Prosecutor of the Year." Mr. Martin received a bachelor's degree from Brandeis University in 1974, and a law degree from Northeastern University School of Law in 1978.



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Honorable A. David Mazzone

The Honorable A. David Mazzone is a Senior Judge of the United States District Court for the District of Massachusetts. Prior to his appointment to the United States District Court in 1978, Judge Mazzone served as an Associate Justice of the Superior Court from 1975 to 1978. He has served as an Assistant District Attorney and an Assistant United States Attorney, and was a partner in a private law firm for ten years. Judge Mazzone was an elected member of the Board of the Federal Judicial Center and has been a leader on numerous committees. Judge Mazzone has served as Chair of the Federal Judicial Center Committee on Guideline Education and Committee on Sentencing Probation and Pretrial Services, and Vice-Chair of the United States Sentencing Commission. Since 1993, Judge Mazzone has been the Liaison Judge for the Alternative Dispute Resolution Program of the District Court of Massachusetts. Judge Mazzone has received numerous honorary degrees and awards, including the Boston Harbor Association Governor Francis W. Sargent Award in 1999, for recognition of his commitment to overseeing the historic cleanup of Boston Harbor. He received a bachelor's degree from Harvard College in 1950 and a law degree from DePaul University College of Law in 1957.

Dorothy Terrell

Dorothy Terrell is a seasoned executive and business leader in the Commonwealth. Ms. Terrell's most recent corporate position was as President, Platforms & Services and Senior Vice President Worldwide Sales at NMS Communications. At NMS, Ms. Terrell established a strategic professional services organization and provides leadership as General Manager of the company's largest business unit. Prior to joining NMS Communications in 1997, Ms. Terrell worked at Sun Microsystems, Inc. as President of SunExpress, the company's aftermarketing and on-line services business. During her six years at SunExpress, she expanded operations into eleven countries and built revenues to over \$300 million. Ms. Terrell has also held several management positions at Digital Equipment Corporation. Ms. Terrell is a member of the Boards of General Mills, Inc.; Sears, Roebuck and Company; Herman Miller, Inc.; the National Housing Partnership Foundation; and The Commonwealth Institute. She earned a bachelor's degree from Florida A&M University.



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The Best of Intentions

Here is a timeline of the various efforts to recommend and implement changes in the Massachusetts' courts during the last quarter century.

1976: *Res Gestae*: Recommendations and Final Report of the Massachusetts Bar Association Committee on Court Reform

Key recommendations: Simplify organization
Consolidate line-item budget

1976: A Report on the State of the Massachusetts Courts, Governor's Select Committee on Judicial Needs (The Cox Commission)

Key recommendations: Simplify organization
Consolidate line-item budget
Improve case flow management

1978: Chapter 478 of the Acts of 1978 establishes the Trial Court system to replace county and local courts. Trial Courts are organized into five departments. The position of Chief Administrative Judge (CAJ) is created. It will later become known as the Chief Justice for Administration and Management (CJAM).

1987: Agenda 90, Modernizing the Judiciary, The Senate Ways & Means Committee

Key recommendations: Improve case flow management
Improve facilities
Strengthen judicial misconduct reviews

1991: Justice Endangered: A Management Study of the Massachusetts Trial Court, Coalition of Courts/Harbridge House

Key recommendations: Simplify organization
Consolidate line-item budget
Improve IT infrastructure
Strengthen judge/manager authority



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1991: The Massachusetts Courts in Crisis: A Model for Reform, BBA State Court Study Committee

Key recommendations: Simplify organization
Consolidate line-item budget
Strengthen judge/manager authority

1992: The Chief Justice's Commission on the Future of the Courts, Chief Report of the Organization and Administration Task Force

Key recommendations: Improve case flow management
Strengthen judge/manager authority

1992-93: The Court Reorganization Act increases the authorities and duties of the Chief Justice for Administration and Management (CJAM); expands the Juvenile Court but leaves the overall structure of the Trial Court intact.

1998: Justice Delayed: Improving the Administration of Civil Justice in Massachusetts District and Superior Courts, Pioneer Institute/Judge Winslow

Key recommendations: Improve case flow management
Strengthen judge/manager authority
Track and measure case flow metrics

2002: A Declaration of Independence: Reaffirming the Autonomy of the Third Branch, Pioneer Institute/Judge Dolan

Key recommendations: Consolidate line-item budget
Strengthen judge/manager authority

2002: Various legislative budget "riders" eliminate judicial authority over the clerk's office, and shift authority over probation personnel from judges to the Commissioner of Probation